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Nanya Technology Corp. and  
Nanya Technology Corp. U.S.A.

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF GUAM**

NANYA TECHNOLOGY CORP. and  
NANYA TECHNOLOGY CORP. U.S.A.,

Plaintiffs,

v.

FUJITSU LIMITED and FUJITSU  
MICROELECTRONICS AMERICA, INC.,

Defendants.

Case No. CV-06-00025

**PLAINTIFFS' REPLY IN SUPPORT OF  
THEIR MOTION TO EXCEED NUMBER  
OF INTERROGATORIES AND  
REQUESTS FOR ADMISSION;  
DECLARATION OF SERVICE**

**I.**

**THERE IS GOOD CAUSE TO PERMIT ADDITIONAL  
INTERROGATORIES AND ADMISSION REQUESTS**

Despite the rhetoric in Defendants' opposition, Defendants fail to rebut several undeniable facts that necessitate additional discovery. First, this suit involves eighteen highly technical patents involving computer memory technology, multiple claims of antitrust violations, and several counts of

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**ORIGINAL**

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**FILED**  
DISTRICT COURT OF GUAM

FEB 20 2007 *mpc*

**MARY L.M. MORAN**  
**CLERK OF COURT**

1 patent misuse. Second, Defendants have expressly admitted the need for “modification of the  
2 limitations on discovery provided under the Rules.”<sup>1</sup> Third, despite Defendants’ contention that  
3 Plaintiffs can obtain the requested information “within the bounds of the normal discovery process,”  
4 Defendants have failed to produce a single document despite receiving over 1500 document requests  
5 from Plaintiffs. Finally, even though Defendants’ accused products have been found in the jurisdiction  
6 of Guam thereby subjecting Defendants to this Court’s jurisdiction, Defendants continue to stubbornly  
7 contest jurisdiction and refuse to respond substantively to Plaintiffs’ jurisdictional discovery. On these  
8 facts alone, good cause exists to permit additional interrogatories and admission requests that exceed  
9 the limitations on discovery provided under the Rules.  
10

11 As detailed above, in the pleadings, and in the proposed discovery plan submitted by the  
12 parties, this suit is an unmistakably complex case “due to the numerous patents at issue and the  
13 complexity of the issues.”<sup>2</sup> “Complex and lengthy discovery” is anticipated to take “in excess of one  
14 year,” in the U.S. and in foreign countries, with trial of sixteen days being proposed for January 2009.<sup>3</sup>  
15 The current limitation of twenty five interrogatories and twenty five requests for admission are simply  
16 not sufficient to investigate the issues surrounding eighteen patents and multiple antitrust claims. In  
17 fact, when compared with the fact that discovery is anticipated to take over one year, that discovery is  
18 set to occur both in the U.S., Japan, and Taiwan, and that the proposed date for trial is January 2009,  
19 the additional discovery requests are completely reasonable and foreseeable.  
20  
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22 The additional discovery that Plaintiffs seek inquires into the following distinct areas: (i) the  
23 technical specifications, prosecution history, and claim language of each of the eighteen patents; (ii)  
24 the circumstances surrounding Defendants’ corporate strategy, their attempts to monopolize the  
25

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26 <sup>1</sup> See Proposed Discovery Plan, ¶ 3.

27 <sup>2</sup> *Id.* at ¶ 2.

28 <sup>3</sup> *Id.*

1 semiconductor memory market through illegal tying arrangements and collusive price discrimination  
 2 and their efforts to extort a worldwide license from Plaintiffs based on a single Japanese patent; (iii)  
 3 the circumstances surrounding Defendants' attempts to assert invalid and expired patents against  
 4 Plaintiffs; (iv) Defendants' failure to inform the U.S. Patent and Trademark Office of relevant prior art  
 5 during the prosecution of several of the patents-in-suit; (v) financial data from Defendants regarding  
 6 revenues and sales, gross profits, retail and wholesale prices, market share, licensing agreements, costs  
 7 and expenses; and (v) the vast array of products that incorporate Defendants' processors and  
 8 microcontrollers, the end-products into which Defendants' processors and microcontrollers are  
 9 integrated, and the distribution networks that place these end-products with Defendants' devices into  
 10 the stream of commerce.<sup>4</sup> Based on these discrete and independent topics, Plaintiffs request for  
 11 additional interrogatories and admission requests are not unreasonably cumulative or duplicative.<sup>5</sup>

12  
 13  
 14 Given the wide scope of misconduct and the potential of hundreds of millions of dollars in  
 15 damages, allowing additional discovery would not be unreasonable. Moreover, such discovery would  
 16 permit both parties a full and fair opportunity to present their cases and the benefits would far exceed  
 17 the expenses or burdens.

## 18 II.

### 19 **DEFENDANTS HAVE REFUSED TO COMPLY** 20 **WITH THEIR DISCOVERY OBLIGATIONS**

21 Defendants' assertion that the "normal discovery process" is adequate to address Plaintiffs'

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22 <sup>4</sup> Because of the numerous topics on which Plaintiffs seek additional interrogatories and  
 23 admissions requests, Plaintiffs felt it prudent and more expedient not to burden the Court with multiple  
 24 sets of discovery requests. As stated in Plaintiffs' motion and reiterated herein, Plaintiffs are willing to  
 submit their proposed additional discovery requests should the Court wish to view them.

25 <sup>5</sup> Defendants' assertion that similar relief was requested and not granted in the Northern District  
 26 of California action, *Fujitsu Ltd. et al. v. Nanya Technology Corp. et al.*, No. 4:06-cv-06613 (CW),  
 27 misrepresents the events at the case management hearing on February 2, 2007. Plaintiffs never  
 28 requested additional discovery requests at the hearing and Defendants' evidence supporting such a  
 spurious claim is unsupported. Defendants, while listing allegedly supporting evidence ("Exh. A  
 hereto, at 11" and "Exh. B"), failed to include any exhibits with their Opposition. There is no evidence  
 of such entry on the Court's PACER system nor is there a separate appendix including such exhibits.

1 concerns is undermined by the fact that Defendants have refused to comply with their discovery  
2 obligations. To date, Defendants have failed to produce a single document or have only belatedly  
3 agreed to time frames in which to schedule the depositions of two witnesses for deposition despite  
4 receiving over 1500 document requests and requests for deposition from Plaintiffs since December 14,  
5 2006.<sup>6</sup> As a result, the normal bounds of discovery are not available to Plaintiffs.<sup>7</sup> Defendants' further  
6 assertion that such additional discovery is unworkable and burdensome is true only if Defendants  
7 continue their obstructionist conduct and refuse to work with Plaintiffs to craft a mutually agreeable  
8 solution. Although modifying the limitations on discovery is typically reached through agreement, in  
9 this case, Defendants are not agreeing to any of Plaintiffs' suggested modifications. Nonetheless,  
10 Plaintiffs remain willing to work with Defendants to obtain the information sought in a mutually  
11 acceptable manner.  
12

13  
14 Additionally, Defendants' allegation that limited jurisdictional discovery is adequate to  
15 determine the source of a "small handful of products allegedly purchased in Guam" completely  
16 misrepresents the jurisdictional inquiry required by the Federal Circuit in patent cases and intentionally  
17 seeks to avoid the broad jurisdictional discovery to which Plaintiffs are entitled. Defendants  
18 conspicuously fail to mention that the Federal Circuit has expressly recognized that personal  
19 jurisdiction exists when accused infringers – such as Defendants in this case – place products into the  
20 stream of commerce and the flow of products (whether direct or incorporated into a final product) to  
21 the forum is regular and anticipated. *See Commissariat A L'Energie Atomique v. Chi Mei*  
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23  
24 <sup>6</sup> Had it not been for Judge Wilkins' decision to follow whatever this Honorable Court decides  
25 to do with this case, *i.e.*, to keep it or transfer it to her Court, such limited cooperation as we have just  
recently begun to experience would not have been given. This limited cooperation may disappear at  
any time.

26 <sup>7</sup> Because of Defendants' refusal to provide substantive answers to Plaintiffs' discovery  
27 requests, Plaintiffs have been forced to seek relief from the Court. *See* Plaintiffs' Motion to Clarify  
28 Magistrate Judge's Order and Motion to Compel Substantive Responses to Plaintiffs' Discovery  
Requests [Docket No. 113]; Plaintiffs' Motion to Compel Substantive Responses to Plaintiffs' First  
Request for Production to Defendant Fujitsu Microelectronics America, Inc. [Docket No. 132].

1 *Optoelectronics Corp.*, 395 F.3d 1315, 1321 (Fed. Cir. 2005); *Beverly Hills Fan Co. v. Royal Sovereign*  
2 *Corp.*, 21 F.3d 1558, 1566 (Fed. Cir. 1994). Moreover, the Federal Circuit has acknowledged that this  
3 stream of commerce theory applies to accused parts or devices that may not have “direct” contact with  
4 a forum but which may be incorporated into final products that reach the final forum. *See Chi Mei*,  
5 395 F.3d at 1321 (finding personal jurisdiction over a defendant that sold accused parts that were  
6 incorporated into final products that reached the jurisdiction even though the accused parts themselves  
7 were not directly sold in the jurisdiction). This is true even when – as in the case with Defendants –  
8 the accused infringers have no residence in the jurisdiction, no operations or business location in the  
9 jurisdiction, pay no business taxes in the jurisdiction, have no employees who work or reside in the  
10 jurisdiction, have no license to do business in the jurisdiction and do not own, lease, use, or otherwise  
11 possess property in the jurisdiction. *Id.* Thus, the court must assess not only whether the accused parts  
12 are sold separately in the jurisdiction, but also whether finished products that incorporate those parts  
13 are commercially available in the jurisdiction. *Id.* In this case, Defendants are intentionally avoiding  
14 this inquiry and Defendants’ prediction that they “will provide Plaintiffs with a list of Defendants’  
15 products as well as a list of its customers” has yet to happen and there is nothing to prevent such a  
16 prediction from failing to occur except this Court’s order that it will happen.

17  
18  
19 Finally, there is currently no procedure in place to govern the course of claim construction, the  
20 disclosure of information regarding infringement and invalidity contentions, the exchange of claim  
21 terms, the exchange of claim construction briefs and the claim construction hearing. Defendants’  
22 argument that the procedures outlined in the Patent Local Rules is “a far more effective process for  
23 focusing claim construction issues than that suggested by Plaintiffs” is inaccurate. Although Plaintiffs  
24 agree that the Patent Local Rules would greatly assist in streamlining and organizing the patent  
25 litigation aspect of the suit, in this particular instance (*i.e.* jurisdictional discovery and at this juncture)  
26 the Patent Local Rules of the Northern District of California do not fully address the extensive  
27  
28

1 discovery required to investigate the numerous antitrust issues not covered by the rules. Thus, given  
2 the magnitude of the issues and the discovery sought, the only reasonable solution is to grant this  
3 motion.

### 4 5 **III.**

#### 6 **NOTWITHSTANDING DEFENDANTS' MISREPRESENTATIONS, PLAINTIFFS** 7 **CONFERRED WITH DEFENDANTS REGARDING ADDITIONAL DISCOVERY**

8 Defendants' assertion that Plaintiffs failed to meet and confer regarding Plaintiffs' requests is  
9 completely inaccurate. On January 24, 2007, Plaintiffs met with Defendants at the offices of  
10 Defendants' local counsel in order to discuss the proposed scheduling order and discovery plan. At the  
11 meeting, Defendants' counsel expressly informed Plaintiffs that they would not agree to granting  
12 Plaintiffs' request for additional discovery requests. They opined that Plaintiffs' requests were  
13 "ludicrous" and that they would not agree to them. Because of the complex nature of this case with  
14 eighteen highly technical patents, multiple claims of antitrust violations, and several instances of patent  
15 misuse, and Defendants' recalcitrant attitude toward their discovery obligations, Plaintiffs had no  
16 choice but to move the Court to permit additional interrogatories and admission requests.

### 17 18 **IV.**

#### 19 **CONCLUSION**

20 For the foregoing reasons, Plaintiffs respectfully request the Court grant their motion

21 DATED at Hagåtña, Guam, this 20<sup>th</sup> day of February, 2007.

22 **TEKER TORRES & TEKER, P.C.**

23  
24 By 

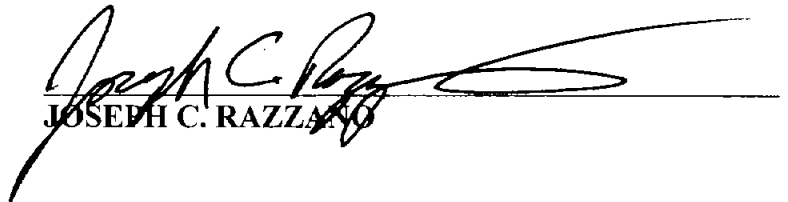
25 **JOSEPH C. RAZZANO, ESQ.**

26 **Attorneys for Plaintiffs**

**DECLARATION OF SERVICE**

I, JOSEPH C. RAZZANO, hereby declare that on the 20<sup>th</sup> day of February, 2007, I will cause to be served, a true and correct copy of Plaintiffs' Reply In Support of Their Motion To Exceed Number of Interrogatories And Request For Admission on Defendants, through their counsel of record, Calvo & Clark, at its offices in Tamuning, Guam.

Dated at Hagåtña, Guam, this 20<sup>th</sup> day of February, 2007.



JOSEPH C. RAZZANO